

Exhibit 2

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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1. HEARING ON APPROVAL OF
DISCLOSURE STATEMENT. CONT'D
FROM 12/18/24, 1/16/25

2. MOTION TO AMEND MEDIATION ORDERS AND REQUIRING PARTIES TO ATTEND GLOBAL MEDIATION (DOC. 1612). CONT'D FROM 1/16/25

3. STATUS CONFERENCE. CONT'D
FROM 11/27/24, 1/16/25

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WILLIAM J. LAFFERTY
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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25 Proceedings recorded by electronic sound recording;
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1 OAKLAND, CALIFORNIA, TUESDAY, JANUARY 21, 2025, 9:46 AM

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3 (Call to order of the Court.)

4 THE CLERK: Calling line item number 1 for the Roman
5 Catholic Bishop of Oakland, case number 23-40523.

6 And I'm moving the parties over now, Your Honor.

7 THE COURT: Okay.

8 (Pause.)

11 THE COURT: Okay. Let's take appearances. And why
12 don't we start with everybody who's going to be representing
13 the debtor today?

14 MS. UETZ: Good morning, Your Honor. Anne Marie Uetz
15 of Foley & Lardner for --

16 THE COURT: Hi.

17 MS. UETZ: -- the debtor. We have a few others.

18 | THE COURT: Okay. Go ahead.

19 MR. LEE: Good morning, Your Honor. Matt Lee of Foley
20 & Lardner appearing for the debtor.

21 | THE COURT: Okay. Nice to see you again.

22 MR. LEE: Likewise.

23 THE COURT: Okay.

24 MR. MOORE: Good morning, Your Honor. Mark Moore
25 from Foley & Lardner on behalf of the debtor.

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1 THE COURT: Okay. Good morning.

2 MS. RIDLEY: Good morning, Your Honor. Eileen Ridley,
3 Foley & Lardner, on behalf of the debtor.

4 THE COURT: Right. Good morning.

5 MR. MOSES: And finally, Your Honor, Shane Moses,
6 Foley & Lardner, on behalf of the debtor. Good morning.

7 THE COURT: Okay. Thank you.

8 Let's get anybody representing the committee.

9 MR. PROL: Good morning, Your Honor. Jeff Prol,
10 Lowenstein Sandler.

11 THE COURT: Okay. Good morning.

12 MR. PROL: It is my partner Brent Weisenberg. And
13 also Tim Burns from the Burns Bair firm.

14 THE COURT: Okay. I see Mr. Burns.

15 Mr. Weisenberg, you want to separately appear or --

16 MR. WEISENBERG: Sure, Your Honor. Brent Weisenberg
17 of Lowenstein Sandler on behalf of the committee.

18 THE COURT: Okay. Mr. Bair.

19 MR. BAIR: Good morning, Your Honor. Jesse Bair from
20 Burns Bair, special insurance counsel for the committee.

21 THE COURT: Okay. And then we have some folks
22 representing insurance companies. Let's hear from them.

23 Okay. Mr. Plevin, we're not hearing you.

24 MR. PLEVIN: Trying to keep you from hearing my dog.
25 Good morning, Your Honor. Mark Plevin on behalf of Continental

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1 Casualty Company.

2 THE COURT: Okay. Anybody else for the insurance
3 companies?

4 MR. JACOBS: Yeah. Good morning, Your Honor. Todd
5 Jacobs from Parker Hudson on behalf of Westport. And I am here
6 with my co-counsel, Blaise Curet.

7 MR. CURET: Good morning, Your Honor.

8 THE COURT: Okay. Wonderful. Anybody else?

9 Okay. How about the U.S. Trustee?

10 MR. BLUMBERG: Good morning, Your Honor. Jason
11 Blumberg for the United States Trustee.

12 THE COURT: Okay. Anybody else whom I have not
13 mentioned yet?

14 MR. MANN: Good morning, Your Honor. Ryan Manns on
15 behalf of RCC, RCWC, OPF, and Aventis.

16 THE COURT: Okay. Very good. Mr. Plevin, can I tell
17 a dog story?

18 MR. PLEVIN: Sure.

19 THE COURT: Okay.

20 MR. PLEVIN: I have lots of them though.

21 THE COURT: Yeah. Here's mine. Years ago, when we
22 were fairly early into the pandemic, we had a Zoom hearing on a
23 motion for summary judgment. And counsel for the party
24 defending against the motion was making an impassioned argument
25 to me. And at one point, he turned very slightly and said,

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1 you're just not helping. And everybody froze. And he said,
2 oh, I'm sorry. I was talking to the dog, who's been trying to
3 jump into my lap for the past ten minutes. Well, so if you
4 have a -- if you have a dog who's going to make an appearance
5 today, I'm sure we'll all find it very helpful.

6 MR. PLEVIN: Well, my (indiscernible) --

7 MS. UETZ: I may put --

8 MR. PLEVIN: -- very well-known to Judge Silverstein
9 because he's made several appearances in both Boy Scouts and
10 Imerys.

11 THE COURT: Very good. Okay. Then he's a veteran.
12 Okay.

13 MS. UETZ: Your Honor, if it would be helpful to our
14 cause, my four-pound dog is at my feet in my office right now,
15 and I would be happy to have him make an appearance.

16 THE COURT: Well, I mean, it's only fair. I mean, if
17 Plevin's --

18 MS. UETZ: Whatever happens.

19 THE COURT: Whatever. So let me begin this way. If
20 there have been any developments as a result of you folks
21 talking over the long weekend and since Thursday, I'm happy to
22 hear them. We had a few things that were open-ended and not
23 yet decided on Thursday, and I'm prepared to give you my
24 thoughts on a number of them, but I certainly want to lead off
25 with whatever -- if you guys have made some progress on

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1 something, or if you have something that you think should be
2 noted at the beginning about a different approach or whatever,
3 I want to defer first to you, and then I'll give you my
4 thoughts.

5 MS. UETZ: Thank you, Your Honor. If I may, Anne
6 Marie Uetz for the debtor. We have had much internal caucusing
7 and review since we were with you last week.

8 THE COURT: Okay.

9 MS. UETZ: Recognizing the holiday, we have not yet
10 had that follow up with the committee, which we will intend to
11 have.

12 THE COURT: Sure. Okay.

13 MS. UETZ: We did have some follow up with Mr. Plevin
14 in respect of one of the issues that arose sort of late --

15 THE COURT: Yeah.

16 MS. UETZ: -- in the hearing. And I would ask Mr.
17 Plevin if he could -- well, I would ask Your Honor to consider
18 Mr. Plevin's view as to one of the questions that you raised
19 late in the hearing concerning the litigation option and
20 exactly what was being assigned. So if it please the Court, I
21 do think that there's an update to be had --

22 THE COURT: Okay.

23 MS. UETZ: -- and I'm directing my comments to the
24 Court rather than Mr. Plevin. But I know --

25 THE COURT: Yeah.

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1 MS. UETZ: -- that we've had the discussion with Mr.
2 Plevin.

3 THE COURT: Okay. Can I just clarify one thing to
4 make sure we're all on the same page?

5 MS. UETZ: Yes. Of course.

6 THE COURT: In my mind, and I hope I articulated this
7 well the other day, there's a difference between what the legal
8 effect is of a plan doing X, something we can argue about at
9 confirmation, and whether the debtor and a counterparty to
10 effectively an agreement -- we'll call it an agreement, for
11 lack of a better word for it, are in agreement about what they
12 are -- to what they are agreeing because that, to me, is a
13 disclosure statement issue. What happens when you do X is more
14 likely a confirmation issue. And I was trying to separate
15 those two. As kind of intertwined as they are, that's what I
16 was getting at.

17 So I'm not trying to put words in Mr. Plevin's mouth.
18 But if we're talking about the disclosure statement aspect of
19 this, I am more worried about is there an agreement or not. If
20 there isn't, can we really solicit if it's uncertain what the
21 what the understanding is between the debtor and one of the
22 insurance companies?

23 Mr. Plevin, that's what I was trying to get at. I
24 suspect you knew that, but I wanted to make sure we began with
25 that. Okay.

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1 MR. PLEVIN: Right. And Your Honor, I guess I should
2 plead confusion because I'm not a hundred-percent sure what
3 conversation Ms. Uetz is referring to. And maybe --

4 THE COURT: Well --

5 MR. PLEVIN: we can have a break later, and she and I
6 can talk.

7 THE COURT: Sure. That's fine. That's fine. Yeah, I
8 mean, I don't want to put you on the spot about something
9 that -- well, we can take a break in a little while.

10 Mr. Weisenberg, you want to go ahead?

11 MR. WEISENBERG: Yes, Your Honor. Brent Weisenberg,
12 on behalf of the committee. Your Honor, it's the committee's
13 position that both of the issues that you identified are
14 present here, meaning there's a disclosure issue.

15 THE COURT: Yeah.

16 MR. WEISENBERG: But there is also a plan confirmation
17 issue. And it's our position that if the plan on its face runs
18 afoul of California law, it will be impossible for the plan to
19 be confirmed. And as you know --

20 THE COURT: Right.

21 MR. WEISENBERG: -- at times, courts have decided that
22 rather than going down that road, they would --

23 THE COURT: Yes.

24 MR. WEISENBERG: -- take that issue up now. And so we
25 can discuss that at length if you'd --

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1 THE COURT: Sure.

2 MR. WEISENBERG: -- like, Your Honor, but I did want
3 to make clear that we sit on both sides of that argument.

4 THE COURT: Well, I know I've heard you say that, and
5 I certainly understand it. I think let's get where we can get
6 with my rulings and what's left that may be -- I mean, some of
7 the matters that are left may be fairly easily dealt with or
8 less consequential. And if we need to take a break and have
9 Mr. Plevin and Ms. Uetz talk about that.

10 I agree with you. I saw them as two different issues,
11 and I was not yet as convinced as you'd like me to be that I
12 need to stop the presses with respect to the second one, but
13 I'm going to hear you today. Okay. I get it.

14 Makes sense? Okay.

15 MS. UETZ: Thanks, Your Honor.

16 THE COURT: Does anybody else have anything
17 preliminary before I give you guys some thoughts on matters
18 that were sort of hanging out there on Thursday?

19 No? Ready to go?

20 Okay. Let me address a few things here. The first
21 one -- well, the first thing we talked about Thursday was what
22 I think we called in shorthand form the OPF motion, which was
23 the committee's motion to have standing to prosecute various
24 claims, most notably what the committee has identified as at
25 least a potential fraudulent transfer claim or maybe preference

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1 claim that sort of was articulated as we went along, but most
2 obviously, a fraudulent transfer claim with respect to the
3 transfer of about 106-million dollars and then I think about 5-
4 million dollars each within the forty days prior to the
5 commencement of the bankruptcy case.

6 The question that I -- well, the first question to
7 deal with in this analysis most typically is is there a
8 colorable action here. And that is usually defined as is there
9 an action that one believes would survive a 12(b)(6) motion. I
10 believe that the critical question in that analysis, and I kept
11 trying to figure out if we could preview that or get some sense
12 of that before we decided to go forward with this or not was
13 the fairly simple sounding, but not probably simple in practice
14 question whether there was a transfer of property to the debtor
15 because although I think these funds were located at the
16 diocese, the debtor has arguments that significant portions of
17 them really weren't the debtor's property.

18 There's a significant portion that was belonging to
19 the schools and would have been their -- although it was in the
20 debtor's bank accounts, maybe for investment purposes, it
21 really was money that belonged to the schools. And there were
22 other funds as to which I'm told, at the very least, the use is
23 restricted.

24 So I began the analysis with, okay, how would we think
25 about those issues and how 12(b)(6)-able (sic) would this be on

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1 that basis because I thought that's really where the debtor was
2 coming from. There was an elongated discussion between me and
3 one of the debtor's counsel where I kept trying to ask, well,
4 is this something more than just that question of property of
5 the estate or debtor's property. And counsel was urging on me
6 some further theories as to why this couldn't be a fraudulent
7 transfer, which maybe it's my shortcoming, but I didn't find to
8 be all that analytically helpful. To me, the question keeps
9 coming back to, well, was this the debtor's property or not.

10 So again, the debtor elongated somewhat the
11 description of why that's problematic during oral argument,
12 which is fine. As to the question of whether some property is
13 the school's, it wasn't so clear to me. I know that there were
14 different programs referenced for money that came into the
15 diocese but was held for different purposes.

16 One question that I don't think is articulated quite
17 yet is well, in what form was it held. Were these all held in
18 different segregated accounts, or were they held with some
19 understanding that, gee, this is for this and this is for that,
20 even though it's in the same account? Some courts have relied
21 on the manner in which the money was held as being very helpful
22 in determining whether this kind of question is 12(b)(6)-able
23 (sic) or not. I'm not sure I would rely solely on that, but
24 that's a matter as to which I don't think I quite have the
25 understanding that I would need if I were to make a decision on

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1 that basis.

2 I'll note as well that all of you guys who are
3 bankruptcy lawyers know that it is frequently the creditors
4 position that, well, I know the debtor's holding that, but it's
5 "really mine". I don't have a claim to it. It's mine. I'll
6 take it. The rest of you have a lot of -- have a lot of fun
7 with the bankruptcy, and I'll just go home and take my stuff.
8 That's an argument that obviously we hear all too often, and
9 there's a big difference between somebody having a claim and
10 somebody actually being able to assert that was mine. Those
11 are two very different things.

12 And while the Bankruptcy Code and the bankruptcy cases
13 certainly understand and respect a difference between property
14 that the debtor may hold for another and property the debtor
15 otherwise holds, I think it's also fair to say that the
16 bankruptcy cases take a fairly jaundiced view of the broad way
17 the creditors would like to assert that position. So I don't
18 think it's a position that I should assume is easily taken or
19 easily proven.

20 So the debtor's statements about, well, it's really
21 the school's money are fine. I'm not so sure I would accept
22 them at face value enough to be certain that I would grant a
23 12(b)(6) motion on that. And I think similarly with respect to
24 restricted funds, it may be that there really was something
25 like a trust that was set up here under California law, and

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1 that would be a fairly easy answer. It doesn't sound like it.
2 If that were the case, I think we'd be having -- we'd be
3 hearing different arguments.

4 So the extent of the restriction in my mind is
5 something that would probably take a little bit more legal
6 sleuthing and fact examining than a 12(b)(6) motion would be
7 likely to involve. It may well be that the debtor would, on a
8 summary judgment motion or something along those lines, be
9 successful or partially successful here. But in the
10 hypothetical world of I would look at a 12(b)(6) motion, I
11 don't necessarily feel at the moment that it is so certain that
12 I would grant that, that I would find this claim isn't
13 colorable. But having made that determination for this
14 purpose, I would also want to skip down to the last factor,
15 which is would the pursuit of this action -- sort of cut
16 through and make the language simpler -- benefit the estate.
17 It might, but not now.

18 So my instinct is to recognize that there may well be
19 a claim worth pursuing here, but that I continue to believe
20 that we need to play out some issues with respect to the plan
21 and that allowing the litigation to go forward now would not
22 presently be a benefit to the estate. It would be, I believe,
23 a significant monetary drain and a significant drain on
24 attention. Having said that, if we do not make progress with
25 the plan, then I think that this is exactly the thing that, for

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1 a whole bunch of reasons, might well be appropriately pursued.
2 So I mean, just hypothetically, for example, if we get to May
3 and the plan is voted down or is not going to be pursued or
4 there other issues that come up, I think I would look at this
5 very differently for that purpose.

6 So I'm basically going to deny the motion without
7 prejudice on the theory that I think the timing is really
8 critical here and the timing very much informs the question of
9 benefit to the estate. Having said all that, I'm very mindful,
10 as I'm sure the committee is, that there's a two year statute
11 on these kinds of things. And I'll just say, if the debtor
12 wants to entertain a stipulation with the committee to extend
13 any 546(b) statute of limitation issues, I would approve that.
14 If they don't do it, I'll do it myself. We are not going to
15 run up against the 546(b) limitations here. So if you guys
16 want to pay some attention to that, great. If you don't, I'll
17 just keep it on my docket to do it, and I will extend the
18 deadline on my own. So that's the OPF motion.

19 With respect to the motion for relief from stay, I was
20 leaning very much toward granting that. I thought an awful lot
21 of good could come from getting some real data on the claims.
22 And frankly, I don't mean to be flip here, but also from
23 creating in everybody's mind the possibility that you're going
24 to hear something in those determinations that you don't like,
25 which I think has been and an incentive to move cases along

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1 more quickly than perhaps they were proceeding without that
2 incentive.

3 But I'm a little bit concerned that what I heard the
4 other day, and I thank Mr. Simons and others for their candor,
5 was that really only one of the six advertised potential
6 bellwether actions is potentially ready anytime soon. That
7 undercuts the practical effect and the practical benefit of
8 this.

9 I'm also somewhat concerned about the fact that
10 there's a new presiding judge with respect to these matters and
11 that that person has yet to have a hearing with respect to the
12 consolidated matter. And I'm both not sure how that judge
13 would otherwise want to handle matters. And I want to be very
14 loathe about either dictating anything in that proceeding or
15 not understanding that once I grant relief from stay, I don't
16 want to ungrant (sic) it. I think that doing it is going to be
17 consequential if and when I do it, and I don't want to do it
18 with any strings.

19 So at the moment, because of my uncertainty about how
20 fast we would get to anything that looked like a helpful data
21 point, for the moment, I'm going to deny the motion for relief
22 from stay, but it's very much without prejudice because things
23 may change, and it may be that it's something that will be very
24 helpful in the future. I don't have the sense that it would be
25 helpful now.

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1 Turning to the disclosure statement, I want to deal
2 sort of in tandem with the questions of whether to include
3 charts, and if I let the debtor include charts, whether let the
4 committee include charts, as well as the committee's request
5 that I require that the debtor, for lack of a better word,
6 estimate the total amount of the survivor claims. I'm going to
7 answer both those questions in the negative.

8 I think that charts, while the debtor may believe that
9 they're helpful in the context of what has been accomplished in
10 different bankruptcy cases, I'm going to agree with the
11 committee that I think every one of these situations is
12 different enough, every context is different enough, that
13 including charts -- I don't think anybody's trying to be
14 misleading here. I just believe that it's really not terribly
15 helpful to the otherwise uneducated reader of disclosure
16 statements to look at a chart without understanding all the
17 reasons why the context and many base facts might be completely
18 different from one case to another, let alone the fact that
19 there are other ways of resolving these kinds of claims that do
20 not depend upon a bankruptcy case. And those results might be
21 very different. And that's exactly something that I think a
22 claimant is entitled to think about, if we're not in a
23 bankruptcy, what might happen. So I think that for all those
24 reasons, I think charts are better left out of this exercise.

25 And in my mind, analytically, for a similar reason,

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1 I'm going to resist the urge to ask the debtor to, for lack of
2 a better word, estimate or come up with a aggregate number with
3 respect to the abuse survivor claims. I'm going to agree with
4 the debtor that again, there are ways in which every claim is
5 different, although I realize that when we treat these things
6 under the post-confirmation world, we do treat them in a -- we
7 try to routinize them in some fashion.

8 But having said that, these claims are unliquidated,
9 and most of the claim forms, I'm told, don't even purport to
10 include an amount. And I'm not sure what it would help to have
11 the debtor take even what might be a very educated guess as to
12 what those numbers are. I think that also would end up being
13 more confusing than anything else, and I don't see that it
14 really helps the process all that much to have the debtor take
15 that position and have somebody who has a dog in that fight in
16 terms of each of their own claims try to make sense of what
17 that means. So I'm going to resist the urge to have the debtor
18 estimate the claims.

19 With respect to the liquidation analysis and the
20 1129(a)(7) issues, we had an extensive discussion about that.
21 The debtor at the moment is not providing what you would think
22 of as a traditional liquidation analysis on the theory that
23 really, we couldn't be liquidated outside of bankruptcy. And I
24 think that may well be correct, but it may also be the case
25 that under those circumstances, the debtor simply isn't a good

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1 candidate for reorganization under Chapter 11. I'm going to
2 agree with the committee that 1129(a)(7) is an integral part of
3 the confirmation process. And the liquidation analysis is
4 required in every case. And I think that I'm prepared to
5 discuss some practical ways we deal with that, but I think the
6 argument that we can't be liquidated overstates the proposition
7 in a number of ways.

8 The legal protections that underlie that assertion by
9 the debtor, I think, are real. There clearly are protection of
10 religious functions and First Amendment issues that go to why
11 we would never entertain thoroughly liquidating a debtor. But
12 those are not protections that go to any particular asset.
13 It's not as if state law says a judgment creditor may execute
14 against assets, except something affiliated with a religious
15 organization. The point is more that as you go through that
16 liquidation, a time would come, I believe, when the liquidation
17 would severely enough impinge upon the function and the sacred
18 duties of a religious organization that, for public policy
19 reasons, you wouldn't want to continue it.

20 Now, I think all of this in the bankruptcy context is
21 pretty undefined, which is why I was asking the debtor as a
22 matter of disclosure and in the disclosure statement, to
23 articulate what is the theory that would limit the liquidation
24 in your minds in this context. And it could be anything from
25 well, given that we are providing the service and it's the

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1 bishop's sacred duty to do it, given all that, it's whatever we
2 say it is because we're the only ones who can judge at what
3 point we're effectively not being able to perform our religious
4 duties and our religious functions. If that were the debtor's
5 position, they can say it, and then everybody could decide
6 whether that's consistent with what they believe nonbankruptcy
7 law to be and whether it's "fair and equitable". It may be
8 that there is a way to articulate a functional agreement that
9 at this point if we liquidate these kinds of assets at this
10 level, at that point, we are unquestionably no longer able to
11 perform our duties.

12 So I think, first of all, what we need from the debtor
13 is just some statement of whatever they think it is that limits
14 that in this context. And I realize that's -- I'm assuming
15 that the fact that I haven't gotten a lot of case law about
16 this is because I don't think this has been all that well
17 articulated. So the debtor just has to take a position.

18 And I think that's going to be helpful on a disclosure
19 basis, both to explain, if they have two liquidation analyzes,
20 why one is perfectly persuasive and the other one isn't. And
21 we'll come back to that in a second. I think it's also
22 appropriate for creditors to see this because one of the things
23 a creditor decides in voting on a plan is the embrace of the
24 stark reality if they vote a plan down, there may be no other
25 options and then back out in the cold, cruel world. But I

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1 think that's something for creditors to decide.

2 So I think that that analysis and that articulation of
3 the principle would be helpful not only to the Court. It would
4 be helpful, frankly, to the creditors at disclosure statement
5 time to decide whether this plan comports with their
6 understanding and their sense of what's fair and equitable.
7 And I think that's a fight we have -- we don't have to have
8 that fight now. We have to be able to have that fight at
9 confirmation, which is why I think it's important for the
10 debtor to articulate it now for all those purposes.

11 Also, I also believe that, although I want to -- I
12 think I'm prepared to hear some flexible approaches to how we
13 have a liquidation analysis. I think we need one that, at
14 least hypothetically, encompasses everything that might in some
15 world be liquidated. And I realize that's not going to be
16 easy. Just for my own curiosity, I went back into the docket
17 and looked at the initial schedule A and schedule B and SOFA
18 statements by the debtor and the various amendments. And one
19 thing that I noticed, and I know you guys all know this better
20 than I do, as stated and as amended from time to time, the
21 debtor's position on the value of real property was
22 undetermined. And it's still that, as far as I can tell.

23 So I want to -- in making this determination, I want
24 to be open to ideas as to how we might come up with some
25 numbers or otherwise express this liquidation analysis concept.

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1 But I think we need something that goes beyond, well, we
2 couldn't be made to do it, so therefore we're not going to give
3 it to you. And I'm not trying to be flip because I'm going to
4 give you a number here, and it's a little misleading because a
5 parcel of real property doesn't mean that it's 400-square
6 acres. It just means that for certain purposes and recording
7 and so on, there are different parcels that are deemed to be
8 separate entities. There are 205 parcels of real property that
9 the debtor identifies here. None of them have a value. Again,
10 I'm willing to be somewhat open minded about how we skin this
11 cat, but this is something that we simply have to address.

12 Moving on a little bit, the request from the committee
13 that I require the affiliates seeking a release to include
14 financial information in the disclosure statement, I think I
15 was a little abrupt with Mr. Prol because I think we were
16 really more in agreement than I was letting on. I agree with
17 him that -- well, I don't know that we want to hold up the
18 disclosure statement for this information. I agree with him
19 it's important to anybody voting on this plan and deciding
20 whether to give a release or not. I think that analysis should
21 be informed by some understanding of what the assets are and
22 what, for lack of a better word, the net worth is of any party
23 seeking such a release.

24 On that matter, I'll give you a preview. I think we
25 are likely to have a very involved discussion. If we do

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1 approve a disclosure statement here, we're likely to have a
2 very involved discussion of the timing, which would include
3 discovery and which would include voting. I don't think
4 this -- if I approve a disclosure statement in the next week or
5 so, I don't think that means we have to have votes in twenty-
6 eight or thirty-five days.

7 I think we can -- with your guys indulgence and your
8 intelligent thinking about this, I think we can stage this in a
9 way that will make sense and will make the discovery that I
10 think is fairly important here meaningful to the process and to
11 the people voting on the plan. So I agree with Mr. Prol that
12 information is important. I think that all gets worked out in
13 how we schedule the voting and how we schedule the discovery
14 that I'm sure the committee is going to want to take of anybody
15 seeking a release.

16 The last point that I had in my open list was the
17 motion to compel further mediation, which we at least began to
18 talk about. The place where I'm a little bit stuck here is
19 there are clearly conflicting versions of how things were left
20 in Judge Sontchi's view of the status. One way or the other,
21 I'm going to want to know his views. I can literally give him
22 a call and not get into anything that's confidential and behind
23 the settlement mediation privilege. We could have him file a
24 declaration that would clarify his views. We could have him
25 appear at a hearing to clarify his views.

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1 But before I make a ruling on that motion, I think
2 it's a very important motion. I would want to be informed by
3 his views. So we can talk about different ways we do that.
4 But that's a prelude to me to making a decision on that motion.

5 So those are the matters that I had outstanding that I
6 wanted to give you my thoughts on. With that, I'm prepared to
7 resume discussion of other disclosure statement points or take
8 a break and let Ms. Uetz and Mr. Plevin talk and get square on
9 whatever points they want to make. So it's your guys'
10 pleasure.

11 MS. UETZ: Your Honor, I have at least one follow-up
12 question, if I may, posed to the Court, if you're willing to
13 answer it or not. But I'd like to ask it, if I may, about your
14 ruling so I understand something better.

15 THE COURT: Sure.

16 MS. UETZ: Thank you. And then I have one or two
17 other things. But your ruling with respect to the charts, my
18 question is I'm trying to understand the scope of the Court's
19 ruling there. I understand that the charts ought not be in the
20 disclosure statement, and so we will take them out.

21 THE COURT: Right. But I think --

22 MS. UETZ: I take that in your ruling.

23 THE COURT: But could that be relevant to
24 confirmation? Sure. That answer your question?

25 MS. UETZ: It answers my question, Your Honor.

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1 THE COURT: Yeah. I mean, the other side can say,
2 well, no, it isn't. Or we took some discovery and we don't
3 agree. Yeah, I mean, I think is that a reasonable as a
4 confirmation issue? Sure. I mean, that's a version of fair
5 and equitable. Right?

6 MS. UETZ: And Your Honor, just relatedly, related to
7 that, then, because it is -- because it will come up at
8 confirmation and the debtor would include, among its arguments
9 as to why the plan is fair and reasonable, a reference to some
10 outcomes in other cases will be part of what we argue. It
11 won't be all of what we argue, clearly.

12 THE COURT: Yeah.

13 MS. UETZ: But it will be part of it. My question,
14 just for clarity as we revise the disclosure statement, is may
15 we say anything in the narrative about outcomes in other
16 bankruptcy cases, or should we just leave that alone?

17 THE COURT: I would leave it alone because among other
18 things, I'm willing to bet that if you preview that issue as a
19 confirmation issue, there may be the world's greatest motion in
20 lim (sic) coming from the committee. We'll see. Right. I
21 mean, I don't want to prejudge that. If I were committee
22 counsel, I might certainly have that in mind. So I would --

23 MS. UETZ: It might be the committee's worst great
24 motion in limine. I'm just kidding.

25 THE COURT: You never know. You never know.

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1 MS. UETZ: Understand.

2 THE COURT: I mean, I think of all of you as heroic.

3 I know you know that so that's why. No, I --

4 MS. UETZ: No, I appreciate your (indiscernible)
5 question.

6 THE COURT: -- I think that -- I expect the question.
7 I don't think it's irrelevant at confirmation, but the
8 committee may have a position why, as presented, it's should be
9 limited in some way, or we shouldn't go there for some other
10 reason I'm not articulating now but they will. Okay.

11 THE COURT: Okay.

12 THE COURT: Makes sense?

13 MS. UETZ: That really helps clarify for us, Your
14 Honor --

15 THE COURT: I appreciate it.

16 MS. UETZ: -- and I appreciate that.

17 THE COURT: I appreciate it. Okay.

18 MS. UETZ: One other point I want to raise, which was
19 left open the other day, admittedly, we have not had the
20 further meet-and-confer with the committee, but I think this
21 will help inform it if I ask --

22 THE COURT: Sure.

23 MS. UETZ: -- the question and depending on --

24 THE COURT: Sure.

25 MS. UETZ: -- how Your Honor responds.

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1 THE COURT: Sure.

2 MS. UETZ: It has to do with the appendix versus the
3 inserting the committee's position throughout the disclosure
4 statement.

5 THE COURT: Yeah, I had an idea about that. Can I
6 give you an idea?

7 MS. UETZ: Please.

8 THE COURT: I mean, everybody is assuming that this
9 goes out in a hard-copy form?

10 MS. UETZ: I'm not.

11 THE COURT: Well, if it goes out, is it going to go
12 out in an electronic form?

13 MS. UETZ: I would think it would go out in an
14 electronic form --

15 THE COURT: Okay.

16 MS. UETZ: -- given the length of the document, Your
17 Honor.

18 THE COURT: Well, then here's an idea. I'll be
19 stunned if I'm the first person to think about this. Would it
20 be possible to have, rather than have the committee put their
21 many paragraphs disputing aspects of what the disclosure
22 statement is saying, would it be possible simply to have a link
23 to wherever in the committee discussion at that point is so
24 somebody can literally click a link and go right to what the
25 committee says about this. Is that possible?

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1 MS. UETZ: Your Honor, if I may, I'd like to discuss
2 that with the committee. It's an interesting concept.

3 THE COURT: Okay. Mr. Moore wants to tell me
4 something about that or something else.

5 MR. MOORE: Your Honor, from a technical standpoint,
6 it's certainly possible to do that inside of a PDF document.

7 THE COURT: Yeah.

8 MR. MOORE: You can bookmark. You can link.

9 THE COURT: Right.

10 MR. MOORE: You can hyperlink --

11 THE COURT: Right.

12 MR. MOORE: -- inside of the document itself.

13 THE COURT: Right. I mean, the committee -- I mean,
14 the committee has made the point that it's going to be -- this
15 is going to be a lot of stuff. It's going to be cumbersome. I
16 think they're right about that. If there's a way to make this
17 less cumbersome --

18 MR. MOORE: They don't the page turning.

19 THE COURT: Sorry.

20 MR. MOORE: They don't want the page turning, to say,
21 okay, I'm on page 7. I need to go to page 212.

22 THE COURT: Yeah.

23 MR. MOORE: But if you can shortcut that somehow.

24 THE COURT: Well, I think that's right. I mean, I
25 think potentially that will cut down the number of people who

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1 make the effort to go see what the committee says about
2 something. If there is a way through a hyperlink to do that
3 efficiently so you just click and now here's the committee's
4 position, maybe that helps solve that problem. If you guys
5 want to talk about that, I'm open to some clever thinking about
6 that. I mean, I cannot be the cleverest person about that, I
7 assure you. It's just an idea.

8 MS. UETZ: I think, Your Honor, for the debtor's
9 perspective, and just to make really clear, we hadn't expressed
10 this, but yeah, we did assume and plan that we --

11 THE COURT: Yeah.

12 MS. UETZ: -- would be sending it electronically.

13 THE COURT: Sure. Sure.

14 MS. UETZ: So we will absolutely discuss that --

15 THE COURT: Okay. All right.

16 MS. UETZ: -- with the committee, and maybe that
17 will --

18 THE COURT: Okay.

19 MS. UETZ: -- help to resolve that issue.

20 THE COURT: Okay. Great.

21 MR. PROL: Okay. Judge, Jeff Prol on behalf of the
22 committee. I think we just want to caucus amongst ourselves,
23 and talk to our client.

24 THE COURT: Yeah. That's fine. And by the way, I
25 mean, I'm very sympathetic to what you're saying. So this is

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1 just --

2 MR. PROL: Okay.

3 THE COURT: -- an idea, Mr. Prol.

4 MR. PROL: Yeah.

5 THE COURT: Okay.

6 MR. PROL: Thank you. I appreciate it. I guess the
7 first thing that comes to mind is, look, the disclosure
8 statement will be going not only to plaintiffs' lawyers, but
9 plaintiffs are going to want to read this themselves.

10 THE COURT: Absolutely. They should.

11 MR. PROL: And a lot of them are not terribly
12 sophisticated. And so getting something electronically with a
13 link might present a little bit of problem. But again, it's
14 just something that I want to talk through.

15 THE COURT: Okay. I appreciate it.

16 MR. PROL: Okay. Okay.

17 THE COURT: Thank you very much.

18 MR. PROL: Thank you.

19 THE COURT: Okay. Ms. Uetz, did you have something
20 else before we --

21 MS. UETZ: On the subject of mediation, Your Honor --

22 THE COURT: Yes.

23 MS. UETZ: -- I'm going to make a comment and then ask
24 my question.

25 THE COURT: Sure.

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1 MS. UETZ: Because I was struck by your focus on
2 getting Judge Sontchi's view, presumably because it is the
3 committee which has objected. And Judge Sontchi was
4 responsible for the committee mediation sessions that occurred.

5 THE COURT: Yes.

6 MS. UETZ: My suggestion, if I may, Your Honor, is I
7 think that it would be useful to get all three mediators'
8 views. I don't know to the extent to which you have any of
9 their views. And so I think for this Court to be best
10 informed -- and frankly, you getting the views of the three
11 mediators I think would better inform Your Honor's decision on
12 the global mediation motion more than I ever could. And so --

13 THE COURT: Well, it might. It might. I mean, I was
14 focusing -- as you're commenting, I was focusing on what I was
15 told, which is two significantly different versions of Judge
16 Sontchi's commentary when the mediation suspended, for lack of
17 a better word. Okay.

18 MS. UETZ: And we use the word "paused", I think.
19 Yeah.

20 THE COURT: Yeah, I know. I know.

21 MS. UETZ: So if I may be so bold, I would really urge
22 the Court to get the input of all three mediators into the
23 mediation process. Frankly, they may recommend something I
24 haven't, and it may be better. I don't know, Your Honor.

25 THE COURT: Okay.

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1 MS. UETZ: We really are just pushing to move that
2 forward. And in that vein, you said, how can you be informed
3 of their views?

4 THE COURT: Yeah.

5 MS. UETZ: For my part, Your Honor, for the debtor, I
6 believe that the mediators would respect, of course, the
7 mediation privilege. While not informing you as to the
8 substance of offers --

9 THE COURT: Yeah.

10 MS. UETZ: -- and such, I think they could absolutely
11 talk with you about the process. And for the debtor's --

12 THE COURT: And that's all I'm suggesting. That's all
13 I'm suggesting.

14 MS. UETZ: For the debtor's part, I actually think
15 that that conversation would be better had between you and the
16 mediators without the influence of counsel so --

17 THE COURT: Yeah. And I believe that some of my
18 colleagues have agreed with that position and have actually had
19 those conversations. So I don't think I would be the first
20 person to do this. But also --

21 MS. UETZ: You would not, in our observation, Your
22 Honor --

23 THE COURT: Yeah. Okay. But I'm --

24 MS. UETZ: -- in review other matters.

25 THE COURT: Right. I'm happy to hear from the

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1 insurers.

2 MS. UETZ: And the debtor would be very supportive of
3 that.

4 THE COURT: Okay. I'm happy to hear from the
5 committee or the insurers, but I think, at the end of the day,
6 I have the ability to make a decision if a phone call is just
7 the best way to pursue this. If people want to react to that
8 now, that's fine. I sprang it on you. If you want to talk
9 about it, that's fine too, and we can take this up soon. Or we
10 can take it up after a break, if we're going to take a break
11 for Mr. Plevin and Ms. Uetz to talk about the plan confirmation
12 insurance issue.

13 MR. PROL: Your Honor, Jeff Prol on behalf of the
14 committee. Your Honor, once we get through the preliminaries,
15 I think a break would be very helpful.

16 THE COURT: Yeah.

17 MR. PROL: Not only so that they can confer, but I'd
18 also like to talk to the (indiscernible) team and in order to
19 be able to react to this (indiscernible).

20 THE COURT: Okay. Mr. Prol, I'm losing you a little
21 bit. I don't know if you're close to the mic.

22 MR. PROL: I apologize. I have problems with my mic
23 on this computer. Is that better?

24 THE COURT: It's better. Yes. Thank you.

25 MR. PROL: Yeah. Okay. Thank you.

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1 THE COURT: I'm sorry. Did you want to -- did you
2 have something else you want to tell me?

3 MR. PROL: No. No, Your Honor. I'll repeat what I
4 said. And that is --

5 THE COURT: Which is you want a break after this would
6 be helpful?

7 MR. PROL: Yes. Thank you.

8 THE COURT: Gotcha. Okay. Thank you.

9 All right. Anybody else want to --

10 MR. SCHIAVONI: Your Honor.

11 THE COURT: Yes.

12 MR. SCHIAVONI: Yes. If I could, it's Tanc Schiavoni,
13 Your Honor.

14 THE COURT: You bet. Sure. Nice to see you.

15 MR. SCHIAVONI: For Century. I'm sorry. I had a
16 little problem with the video at the beginning.

17 THE COURT: No problem.

18 MR. SCHIAVONI: I honestly don't have a clue what Mr.
19 Sontchi wants -- Judge Sontchi wants to talk about because we
20 weren't really part -- like, we were excluded from his
21 discussions between the debtor and the committee. So I don't
22 know if we could -- I would suggest that we at least be given
23 an opportunity to confer ourselves with him to find out what
24 his thoughts are in the context of the mediation. I don't know
25 how you speaking with the mediators in a sense doesn't end up

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1 violating the sanctity of sort of what's been mediating. I
2 just don't see it.

3 It's like, and I know this is an issue of different
4 judges have different views, and there are some --

5 THE COURT: Yeah.

6 MR. SCHIAVONI: -- who just feel it just really
7 shouldn't speak to them. And --

8 THE COURT: Yeah.

9 MR. SCHIAVONI: -- I do, Judge, I want to be clear, I
10 have great trust in your judgment and discretion, even if you
11 end up disagreeing with me on this. Okay.

12 THE COURT: Thank you.

13 MR. SCHIAVONI: So I mean, just to be clear about
14 that, but --

15 THE COURT: No, I --

16 MR. SCHIAVONI: -- it might actually just be helpful
17 if we just had a day to talk to him first, though, because we
18 might at least be able to narrow the issues because I'm not
19 sure --

20 THE COURT: Okay.

21 MR. SCHIAVONI: -- what he thinks the issue is, so to
22 speak.

23 THE COURT: Well, can I respond to that? By the way,
24 thank you for saying that. It's an important point. Even if I
25 end up disagreeing with you, I respect the point enormously,

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1 and you even more.

2 I mean, I'm reacting to the fact that I have a motion
3 to compel folks back to mediation. It seems to be focused on
4 the mediation between the debtor and the committee on the
5 theory that, at least for now, the debtor and the insurance
6 companies have hit their stagnarian (phonetic) angle of repose.
7 And we have a plan that reflects that. Also I'm further
8 told -- I just have different versions of what the status was
9 when the matter when the mediation suspended. And one side's
10 telling me that the mediator basically said they were at an
11 impasse, and the other side said, no, we're only pausing.

12 So I'm just trying to follow up on that, most
13 immediately, and get a sense of if the mediator has a position
14 about what the status was when things ended. Without knowing
15 who said what to whom, I think he can tell me what he thought
16 the status was when things ended, and that might be helpful to
17 me. I'm not sure I need much more than that.

18 But I'm open to -- if people think it's a better
19 process for Judge Sontchi or others to be here at a hearing and
20 tell us all that or to file a declaration, I'm willing to
21 consider different ways of thinking about it. I think there
22 are reasons why a phone call might be a little better, frankly,
23 from a candor standpoint. But I wanted to throw that idea out
24 there, and you can all give me your thoughts about it.

25 And Mr. Schiavoni, as always, thank you for your

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1 thoughts.

2 Do we have anything else that we would want to get
3 into before I take a little break and let people huddle about
4 different things?

5 MS. UETZ: Not from the debtor's perspective, Your
6 Honor. Thank you.

7 THE COURT: Okay. Anybody else?

8 How long do you want to take?

9 MS. UETZ: I would suggest fifteen or thirty minutes.
10 And I'll be informed --

11 THE COURT: Okay.

12 MS. UETZ: -- by Mr. Plevin if he thinks fifteen --

13 THE COURT: Okay. No --

14 MS. UETZ: -- or thirty minutes is best.

15 THE COURT: -- one thing I -- one thing I can tell you
16 is we have a social engagement at the court today. And I will
17 be -- I'm going to be breaking at about ten to 12 for that and
18 back at about probably 1:15-ish. And I'm happy to go into the
19 afternoon. I mean, we'll get as much done today as we can get
20 done. Okay. But I know that we're going to -- we're going to
21 need to recess for a while.

22 So if that helps you think through when you want to
23 come back, great. If it doesn't, that's fine. But at about
24 ten to 12, we'll be breaking one way or the other. Okay.

25 MS. UETZ: Thank you, Your Honor.

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1 MR. PLEVIN: Your Honor, this is Mark Plevin. Why
2 don't we say about twenty minutes?

3 THE COURT: All right. That gets us to about ten
4 after; is that okay?

5 MR. PLEVIN: Yeah.

6 MS. UETZ: Great, Your Honor.

7 THE COURT: Okay. Thank you very much. Thanks to all
8 of you. See you in about twenty. Thank you.

9 MS. UETZ: Your Honor, just a technical question for
10 Ms. Fan. If we exit --

11 THE COURT: Yes.

12 MS. UETZ: -- and rejoin, does that work, or do we
13 need to stay on? I just, technically, it may help.

14 THE COURT: Go ahead, Mr. Fan.

15 THE CLERK: Yes, Your Honor. Parties can exit. I
16 will keep the Zoom open, and they can rejoin as

17 THE COURT: Okay.

18 THE CLERK: -- they need to, Your Honor.

19 THE COURT: All right.

20 MS. UETZ: Thank you.

21 THE COURT: See you guys -- see you guys at about ten
22 after.

23 MS. UETZ: Appreciate it. Thank you.

24 THE COURT: Okay. Thank you very much. Thank you.

25 (Recess from 10:31 a.m., until 10:31 a.m.)

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1 THE CLERK: Please come back to attention. The court
2 is in session.

3 THE COURT: Okay. We're back.

4 Ms. Uetz, I think the ball's back in your court.
5 Where do you want to start?

6 MS. UETZ: Yes, Your Honor. Thank you, Your Honor. I
7 would ask the Court to hear Mr. Plevin on the subject of the
8 assignment and the --

9 THE COURT: Okay.

10 MS. UETZ: -- issue that you described as one of the
11 two issues, whether there is a meeting of the minds as between
12 the debtor and the committee.

13 THE COURT: Okay.

14 MS. UETZ: Separate from that, I've given you the
15 debtor's view with respect to the motion to compel mediation
16 and --

17 THE COURT: Yeah.

18 MS. UETZ: -- that the debtor is absolutely fine and
19 actually thinks it would be a good thing for this Court to get
20 the input of all three mediators with respect to process.

21 THE COURT: Okay.

22 MS. UETZ: And not only do we not have any objection
23 to that, I actually think it would be better than the parties
24 trying to influence that discussion.

25 THE COURT: Well, can I break that in pieces then?

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1 MS. UETZ: Sure.

2 THE COURT: If Mr. Schiavoni wants to pick up the
3 phone and call a mediator and ask the same question I would, do
4 you have a problem with that?

5 MS. UETZ: No, Your Honor. I don't control that,
6 and --

7 THE COURT: I don't either. Okay.

8 MS. UETZ: -- I don't purport to.

9 THE COURT: I don't either. Okay. Okay.

10 MR. SCHIAVONI: Judge, if I could, just, like, I
11 personally thought the selection of the caption for the motion
12 was not perfectly worded. Okay. I personally never viewed the
13 mediation as ending or that there'd be need to compel a
14 mediation. I really saw what the debtor was doing was
15 suggesting let's get all together in February. And I will call
16 Judge Sontchi, if that's acceptable to everyone, but I don't
17 think --

18 THE COURT: I have no problem with it.

19 MR. SCHIAVONI: I don't think anybody really -- at
20 least from our perspective at Pacific, we didn't view anyone as
21 suggesting the mediation was over. So that's like, it'd be the
22 first case I ever had where we weren't talking going right into
23 the confirmation hearing.

24 THE COURT: Right. Understood. Okay. Thanks.

25 MS. UETZ: And so Your Honor, with that, after those

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1 two issues, I think ball is in my court to convene, meet-and-
2 confer, productive meeting with my friends who are counsel for
3 the committee --

4 THE COURT: Right.

5 MS. UETZ: -- and see what progress we can make. In
6 terms of timing, I actually would want to have that discussion
7 and maybe return to the Court with a suggestion on timing
8 because I'm not certain how much time we will need to turn the
9 next and hopefully final amendment. So --

10 THE COURT: Okay.

11 MS. UETZ: -- I'll look for direction, but that's what
12 I was thinking about timing.

13 THE COURT: I appreciate it, but I want to make sure
14 that I'm not cutting you off if there were other issues that
15 you thought we needed to get clarity on re objections to the
16 disclosure statement. Now is the time. Okay.

17 MS. UETZ: Understood, Your Honor.

18 THE COURT: Now, maybe you're in the happy place where
19 you think where we've really resolved all the things that you
20 need a judge for. That's fine.

21 MS. UETZ: Not yet happy, Your Honor. I will be happy
22 when we have a plan confirmed. But for purposes of today --

23 THE COURT: Well, how about content? Okay. Didn't
24 you say content for today? Okay. All right.

25 MS. UETZ: Content for today. And I think that you've

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1 given us things that will really help inform our discussion
2 with the committee counsel --

3 THE COURT: Okay.

4 MS. UETZ: -- going forward and so --

5 THE COURT: All right. Well, why don't I -- so I
6 should hear from Mr. Plevin, and we'll see where that leaves
7 us?

8 MS. UETZ: Yes.

9 THE COURT: Is that fair? Okay.

10 All right. Mr. Plevin.

11 MR. PLEVIN: Thank you, Your Honor. I started off by
12 saying I was confused. We had this morning, afternoon
13 doubleheader last week in two cities, and there were a lot of
14 conversations. And I wasn't a hundred percent sure which
15 one --

16 THE COURT: Sure.

17 MR. PLEVIN: -- I was being asked to talk about. But
18 just to clarify, there is no daylight between the debtor and
19 the insurers with respect to the terms of the assignment. We
20 are in alignment that the debtor is assigning the rights they
21 have to the trust as described in the plan and the disclosure
22 statement. And as Your Honor recognized last week and at the
23 beginning of the hearing today, the legal effect of
24 confirmation may have a role in how those rights are applied
25 later. But for purposes of disclosure, there is no

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1 disagreement between the debtor and the committee -- the debtor
2 and the insurers rather.

3 THE COURT: Can I pursue that for just a second? I
4 mean, I certainly take your point that this is unknowable in
5 the sense that a lot of what is being described here is going
6 to depend on some conduct that is going to occur, if at all,
7 after we're blessed with an effective date here. Right. So if
8 there are these -- I mean, putting aside your arguments about
9 the effect of confirmation, if there are these claims, they're
10 not even -- the predicate for them won't even occur until some
11 later date. So to describe them with any kind of specificity
12 beyond they may occur if they do X is something that we really
13 can't do.

14 But I guess, where I really want to push back a little
15 bit is if the debtor says I'm transferring all my rights. And
16 confirmation will result in the creation of a trust. The
17 debtor's going to put some money in the pot. At least one
18 affiliate is going to do the same thing. Some insurance
19 companies may settle, although I don't have any sense of the
20 likelihood of that at the moment. And at the end of the day,
21 then you're left with your rights against the insurance
22 company.

23 If the debtor says either, well, I don't think that
24 confirmation affects those rights and a discharge affects those
25 rights or I'm not sure but I'm giving you everything I have

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1 otherwise, and the insurance company's position is the
2 discharge terminates some of those rights, I'm kind of at a
3 loss to how to describe that to somebody trying to vote on a
4 plan.

5 MR. PLEVIN: Well, it's hard to -- it's hard to
6 describe because, as you pointed out, the facts haven't arisen
7 yet.

8 THE COURT: So that part, I give you. But you're
9 taking the position that, look, once this debtor is discharged,
10 those claims are gone as a matter of law. The debtor either
11 agrees with that or doesn't know. And I think that, for
12 disclosure purposes, I'm not entirely comfortable with that.
13 And I'm certainly going to let the committee weigh in on this.
14 So if you can help me with that piece of it, I'd be grateful.

15 MR. PLEVIN: Well, I think, Your Honor, at the hearing
16 last week, there was reference. I don't think this exact
17 phrase was used, but it was described as essentially being a
18 sort of quitclaim deed that the debtor, as I understand it,
19 hasn't necessarily gone through an analysis of the effect of
20 the discharge on these rights because once the trust is -- once
21 the effective date occurs and the trust has the rights, it's
22 not the debtor's problem. And so I don't know that the debtor
23 has anything more that they could disclose on that point.

24 THE COURT: Well, I guess I'll come at it from a very
25 slightly different angle. If, for disclosure statement

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1 purposes, what a creditor is looking at is look, there's no
2 other plan here. And I'm not sure if in reality there ever
3 would be one. You guys know better than me whether committees
4 have ever really robustly put together a plan and a religious
5 case or not and if they have, whether they've ever thought
6 they'd get it confirmed.

7 But if the decision is we either take this plan with
8 risks that the debtor either can't or won't identify but risks
9 that the insurance company believes are quite real, or we don't
10 take this and at least in that alternative universe, we
11 certainly have those claims, I mean, I think that's just, that
12 that's not a choice -- well, I'm uncomfortable with the way
13 that choice gets articulated and lined up. That's what I'm
14 worried about.

15 I'm not trying to begrudge you your position that
16 confirmation would have a certain effect. But I mean, I don't
17 know if we can say the insurance companies believe this. It
18 may well be litigated after this is all said and done. If
19 somebody thinks I can make a determination about that and I can
20 do it, I don't know, as part of this process, before we get to
21 confirmation, or at confirmation, maybe that's the way to think
22 about it.

23 But let me pause for a moment and hear from the
24 committee because I have a feeling they're going to tell me
25 this is a disclosure statement issue.

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1 MR. PLEVIN: If I could just make one point, Your
2 Honor. I think it's an --

3 THE COURT: Yeah.

4 MR. PLEVIN: -- information issue. What you're
5 basically saying is that the parties should consider putting in
6 legal briefs about the effect of the discharge on these rights,
7 and that's not a disclosure statement issue. That's a
8 statement -- that's an issue for confirmation, where the
9 committee says, incorrectly, in my view, that the plan somehow
10 violates California law. And if that's their view, then that's
11 a confirmation objection --

12 THE COURT: Well --

13 MR. PLEVIN: -- (indiscernible) 1129(a)
14 (indiscernible)

15 THE COURT: No, I --

16 MR. PLEVIN: -- (indiscernible) file a brief on that.

17 THE COURT: I hear you. I mean, another way to
18 articulate it would be in light of the plan and the
19 confirmation that the plan wishes to have happen, there is a --
20 from the insurance company's perspective, the rights will be
21 gone. There's a significant risk. We really can't predict
22 until a judge makes a decision. At that point, somebody could
23 just say, well, I don't want to vote for this plan. I don't
24 want any part of that risk. I'm not voting for this plan. And
25 I'm not sure -- I don't know if that's a fair choice or not.

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1 So let me hear from the committee about how thoroughly
2 I've misstated what they're worried about.

3 MR. BAIR: Thank you, Your Honor. This is Jesse Bair
4 on behalf of the committee.

5 THE COURT: Yeah.

6 MR. BAIR: Setting aside the piece of this about
7 whether the plan violates California law, the committee
8 continues to believe that there is a very real disclosure
9 statement issue here. And it sounds like what we're hearing
10 from the debtor and the insurance companies is that they agree
11 on the words on the page, but they don't agree on the legal
12 impact that those words will have on the insurance rights post-
13 confirmation.

14 And why we think that's significant is what a survivor
15 is going to see in this disclosure statement are
16 representations by the debtor that all of the insurance claims
17 are being transferred to the survivors post-confirmation. But
18 if it's the case, as the insurance companies have said in their
19 briefing and appear to be saying today, that their view is that
20 by confirmation of the plan, an entire class of claims, bad
21 faith, extra contractual claims are being extinguished, that
22 needs to be described clearly because there's a difference
23 there between the survivors' rights --

24 THE COURT: Okay.

25 MR. BAIR: -- in state court and what their rights

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1 will be post-confirmation --

2 THE COURT: Yeah. So can I --

3 MR. BAIR: -- (indiscernible).

4 THE COURT: I hear you. Can I play it back and see if
5 I have it right?

6 MR. BAIR: Sure.

7 THE COURT: With all that, would it be sufficient in
8 your mind -- and if you don't want to answer it now, you need
9 to talk to your cocounsel, that's okay -- would it be
10 sufficient for a disclosure statement to say the debtor's
11 position is they're transferring all their rights to the abuse
12 survivors through the plan. They are not taking a -- and I'll
13 not put words in Ms. Uetz's mouth. They're not taking --
14 they're not warning that that necessarily means the rights
15 survive. They're just, they're doing what trustees do, which
16 is whatever rights I have, you can have.

17 On the other hand, the insurance company's position is
18 that once that's accomplished through confirmation, the debtor
19 is discharged, those rights are, as a matter of law, gone. It
20 is unclear what the answer is, and it will be unclear until the
21 judge makes a ruling on this at confirmation because I'm just
22 playing it out now in this fashion. It is therefore entirely
23 uncertain, as we sit here today, whether your rights with
24 respect to certain claims against insurance companies are
25 preserved or not preserved through confirmation of this plan.

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1 I mean, would that be -- if that were the disclosure, would
2 that be disclosure sufficient for you, or would that not be?

3 MR. BAIR: I think we would want to talk. As the
4 committee, we want to confer on that.

5 THE COURT: Yeah.

6 MR. BAIR: Just being presented with that, that seems
7 much clearer to me --

8 THE COURT: Well, it's also very simplistic.

9 MR. BAIR: -- of what's going on here.

10 THE COURT: It's incredibly simplistic because I don't
11 know these issues the way you guys do. But my question, Mr.
12 Bair, is this. I think there's two levels to this. One is, is
13 there enough information is one. And the second is, is this so
14 uncertain that who should vote on this. We don't know what
15 we're talking about. I mean, because I think it would be Mr.
16 Prol's and Mr. Weisenberg's position, perhaps, that if this is
17 that uncertain, why vote on it? Why solicit on something.
18 that's that undefined?

19 MR. BAIR: I agree, Your Honor.

20 THE COURT: And so I'm trying to -- I'm trying to get
21 to the answer to both of those questions.

22 MR. BAIR: Yeah. We do think there's a fundamental
23 issue with the fact that what appears to have happened here is
24 the debtor and the carriers reached what they represent to be a
25 consensual agreement --

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1 THE COURT: Right.

2 MR. BAIR: -- when, in fact, the debtor is
3 representing that all of the insurance rights are being
4 transferred. And it appears that the insurers interpret that
5 same agreement to mean bad faith claims are being
6 extinguished --

7 THE COURT: Right.

8 MR. BAIR: -- as a matter of law upon confirmation of
9 the plan and so --

10 THE COURT: Well, upon discharge, really. Yeah. I
11 gotcha. Yeah.

12 MR. BAIR: Yeah. And so in order to be coproponents
13 of the plan, I think they do need to come to a landing spot on
14 exactly how these extra contractual bad faith claims are being
15 handled and explain that clearly in the plan one way or the
16 other.

17 THE COURT: Well, if they don't and if we are left
18 with simply a very sobering, perhaps, description of this, that
19 the debtor's position is we have no reason not to give you
20 anything we have, and we'll do it. And the insurance company's
21 position is that's fine, but the discharge means something.
22 Means that the claims are gone. The debtor is not taking a
23 position about that because if they're acting like a trustee,
24 they don't have to. And I'm not trying to be cynical. They
25 don't have to. I mean, they're putting everything in the pot,

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1 whatever it is. The effect of putting it in the pot and having
2 the pot be managed through confirmation is the issue.

3 So on the one hand, can you make enough disclosure
4 about that that people know what the risk is, and two, at some
5 point, are you describing a risk that is just a meaningless
6 choice?

7 MR. BAIR: I do think that, Your Honor, I do think the
8 carriers and the debtor should come to an agreement on this. I
9 mean, if you are -- I think they've both made representations
10 that the insurance assignment is a fundamental component of
11 this plan. And so --

12 THE COURT: Right.

13 MR. BAIR: -- if survivors are going to vote on it,
14 they really should be speaking with one voice about if bad
15 faith survive or don't survive confirmation.

16 THE COURT: I don't agree that in a perfect world that
17 had happened. I have a -- I have a feeling it might not -- we
18 may not be able to do that in the way you would like.

19 So before I hear from the committee, Ms. Uetz, you
20 want to clarify something for me?

21 MS. UETZ: Yes. Your Honor, I have a couple of
22 comments to this.

23 THE COURT: Yeah.

24 MS. UETZ: Just one, to be clear, the insurers are not
25 coproponents --

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1 THE COURT: Right.

2 MS. UETZ: -- of this plan. The debtor --

3 THE COURT: Yeah.

4 MS. UETZ: -- has proposed the plan. There --

5 THE COURT: Right.

6 MS. UETZ: -- is no coproponent.

7 THE COURT: Okay.

8 MS. UETZ: Secondly, and I'm going to respond to Your
9 Honor's suggestion, but I want to just make one or two points
10 before I do.

11 THE COURT: Okay.

12 MS. UETZ: Secondly, we're not aware of any
13 requirement that a debtor's disclosure statement have to
14 describe other parties' legal positions on given issues,
15 especially where the debtor is the sole proponent of the plan.
16 Implicit in your suggestion, Your Honor, and I think what the
17 debtor would be prepared to do is to identify if this Court
18 were to require it, a risk associated with this. But to start
19 to try to articulate the insurers' view, not a plan proponent,
20 not the committee, but the insurers' view of a legal issue and
21 how that may play out after confirmation, in our view, goes a
22 step too far at this stage for disclosure purposes.

23 I'll make another note, Your Honor, and that is that
24 the debtor is assigning its rights. It's not assigning claims.
25 And I think, Your Honor, while stated it, we're not repping and

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1 warranting. You had that discussion with Ms. Ridley last week
2 on the record. We're not repping and warranting that.

3 So we are in agreement with the insurers that we are
4 assigning what we are assigning. And if the Court requires us
5 to add a sentence or two that says there's some risk associated
6 with how that may play out post-confirmation, depending on how
7 a court may decide a legal issue, that's one thing to identify
8 that as a risk. There's a risk of that with respect to a lot
9 of different parts of any plan of reorganization, how it may
10 later be challenged, defended, interpreted, et cetera. And I
11 just think we, from the debtor's perspective, think it goes
12 quite a step too far to try to insert into the disclosure
13 statement the legal arguments concerning this issue or other
14 issues.

15 THE COURT: Well, at the moment, I'm not agreeing with
16 you in the following way. Okay. People reading this plan are
17 being told that there's a certain amount of money in a trust
18 for you, and we're transferring our rights. And if, but for
19 this plan, those rights would unquestionably include things
20 like bad faith claims that could be pursued against insurance
21 companies, if there turn out to be any, but the plan, at least
22 by the logic of a significant player here, it's the very act of
23 confirmation that's going to radically affect those rights.

24 I think that's -- I mean, what legal position somebody
25 may take down the line once the plan is confirmed, sure.

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1 There's too many of those to try to game-plan every one of
2 them. But where the argument is, it's confirmation itself that
3 does this. In my view, that's just a different layer of
4 complexity and risk. I mean, it's a risk that the plan itself
5 is creating. That's what worries me about this.

6 MS. UETZ: Your Honor, I'm going to ask, if I may, Ms.
7 Ridley to weigh in. But I will leave you with this for my
8 part. I think the debtor can well identify the risk for a
9 creditor to consider voting without going down the path of
10 articulating or attempting to articulate the arguments of
11 multiple insurers on that issue, as well as the argument of the
12 committee on that issue.

13 In other words, I think there's a simpler way for the
14 debtor to identify this risk. And maybe I'm reading too much
15 into what you suggested, but I strongly believe that trying to
16 have me articulate the legal arguments and objections of this
17 group of insurers as well as the committee, whereas instead of
18 doing that, we can identify this as a risk. I think there's a
19 difference between those two things.

20 THE COURT: Okay.

21 MS. UETZ: And I think identifying it as a risk is
22 really what is important for creditors.

23 THE COURT: Well, it may be that this is the one place
24 in the plan where we should have three modules. Module 1 is
25 what the debtor thinks about this. And this is just an idea,

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1 so nobody freak out yet. Okay. Module 1 is the debtor
2 believes X. Module 2 is the insurance companies believe Y.
3 Module 3 is the committee is very worried about Z. And let me
4 just -- somebody had their hand up. Was it Mr. Bair, maybe?

5 MR. BAIR: Yes, Your Honor. But --

6 MS. UETZ: If -- I'm sorry. Go ahead.

7 MR. BAIR: Oh, Your Honor, I did have one comment in
8 response to Mr. Uetz's argument, but I --

9 THE COURT: Yeah.

10 MR. BAIR: -- can speak after the Court has finished
11 (indiscernible).

12 THE COURT: Well, I want to -- I certainly wanted to
13 hear from your colleagues. I think Mr. Weisenberg and Mr. Prol
14 have been very patient in having me say things that they're
15 going to say better than I did. So I don't know which of you
16 is going to take the lead on this.

17 MR. BAIR: Sure, sure. I just wanted to respond on
18 one point, Your Honor. And then if --

19 THE COURT: Okay.

20 MR. BAIR: -- any of the other committee professionals
21 wish to speak --

22 THE COURT: Yeah.

23 MR. BAIR: -- of course, they should speak up as well.

24 But just in response to Ms. Uetz's comment about sort
25 of the uncertainty and difficult nature of --

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1 THE COURT: Yeah.

2 MR. BAIR: -- listing other parties' positions, I
3 mean, the whole reason we're having this discussion is because
4 the carriers have stated their position. And I'm just looking
5 at certain insurers' opposition to --

6 THE COURT: Yeah.

7 MR. BAIR: -- the committee's insurance derivative
8 standing motion, they say, any confirmed plan will provide
9 debtor with a discharge, and debtor then will not be at any
10 future risk of having to pay in excess of limits verdict. And
11 then they explain that that would, in effect, extinguish any
12 bad faith claim. So it's not --

13 THE COURT: Right.

14 MR. BAIR: -- there's no mystery here about what their
15 position is. Their position has been stated, that they believe
16 no bad faith claims will survive confirmation of this plan.

17 And we agree with Your Honor's concern here. We think
18 this is fundamentally different than the concept of maybe
19 there's ultimately no coverage here. We think it's different
20 to say --

21 THE COURT: Yeah.

22 MR. BAIR: -- maybe ultimately there is no coverage
23 versus this plan --

24 THE COURT: Right.

25 MR. BAIR: -- by its structure eliminates

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1 THE COURT: Right.

2 MR. BAIR: -- an entire class of claims so --

3 THE COURT: To me, that -- to me, I mean, look, there
4 are a lot of plans that say, we got a piece of litigation. We
5 think it's great. We're going to give it to the liquidating
6 trustee. They'll pursue it. But hey, it's litigation. Who
7 the hell knows?

8 MR. BAIR: Yeah.

9 THE COURT: To me, that's different from somebody says
10 confirming this plan is going to change everybody's rights.
11 Those are apples and oranges in my view. That's why I'm
12 pausing on this as long as I am.

13 MR. BAIR: Agreed, Your Honor. And two other things
14 that that I have. The other thing, we think this case is a bit
15 unique, and this is in response to the debtor's comment about
16 putting in other parties' positions. There's been
17 representations made in the briefing and in court about how the
18 insurance assignment is the cornerstone of this plan and how
19 this plan is so beneficial because the insurance companies
20 don't object.

21 And so if it turns out that the insurers and the
22 debtor have a different interpretation of what they agreed to,
23 and now all of a sudden there's not a meeting of the minds, it
24 could disrupt this plan. And so we just want to get to the
25 bottom of what people's --

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1 THE COURT: Yeah.

2 MR. BAIR: -- what their interpretation of the plan
3 is --

4 THE COURT: Okay.

5 MR. BAIR: -- so survivors can understand that and
6 vote.

7 THE COURT: Okay. All right.

8 MR. BAIR: And lastly, Your Honor, we did raise a
9 third-party-release issue at the last hearing that I don't know
10 if we got to the bottom of. The committee does still believe
11 that under California law, the Hand decision, 1994 court of
12 appeals decision, survivors have direct claims once they become
13 judgment creditors. If an insurance company in bad faith
14 refuses to pay a final judgment, we do think section 5.14 of
15 this plan, as it's currently drafted releases that claim. It
16 says there's no -- in our view, it says there's no exposure in
17 excess of the state court abuse judgment.

18 That would release any extra contractual claims. And
19 we do think that that's a Purdue issue. That's a nonconsensual
20 third-party release in our view. And we continue to have that
21 objection to the disclosure statement at this point.

22 THE COURT: Okay. Mr. Moore, you want to have a quick
23 word before I go back to the committee?

24 MR. MOORE: Thank you, Your Honor. Mark Moore for the
25 Roman Catholic Bishop of Oakland.

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1 Your Honor, this is the issue that we talked about
2 where I believe the language is "based on the abuse claim".

3 THE COURT: Yeah.

4 MR. MOORE: And it's in two different places.

5 THE COURT: Yeah.

6 MR. MOORE: And we discussed talking with the
7 committee about whether we --

8 THE COURT: I thought so.

9 MR. MOORE: -- I think the Court used the -- yeah, the
10 Court used the language --

11 THE COURT: Yeah.

12 MR. BAIR: -- maybe "concerning the abuse claim", or
13 something along those lines, maybe an alternate formulation.

14 THE COURT: Uh-huh. Uh-huh.

15 MR. MOORE: -- but I don't think that there's any
16 dispute as between us and the insurers in any way that that
17 particular language, by preventing double-dipping or double
18 recovery from the trust and the insurer --

19 THE COURT: Yeah.

20 MR. MOORE: -- on the same claim --

21 THE COURT: Yeah.

22 MR. MOORE: -- has any third-party impact as far as
23 claims go.

24 THE COURT: Well, and I think you can work that out.
25 I'm highly confident. Okay.

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1 MR. MOORE: Understood.

2 MR. BAIR: Your Honor.

3 THE COURT: Mr. Bair, look, look, we've got ten
4 minutes. I want to hear from the committee about the
5 disclosure aspects of it from your other professionals, if they
6 have something to say. So just hold on one second.

7 Mr. Weisenberg, from a disclosure statement
8 standpoint, where are we with this discussion?

9 MR. WEISENBERG: Your Honor, I think Mr. Bair was
10 going to make the point, and it's an important one --

11 THE COURT: Yeah.

12 MR. WEISENBERG: -- that that I don't think Mr.
13 Moore's point was on all -- was responding to the point we're
14 trying to make, which is there is a gating issue that this
15 Court needs to address, which is, frankly, the legality of the
16 plan because we believe that there are provisions of the plan
17 that, on their face, violate California law. And so the plan
18 could not be confirmed.

19 And so I turn over the mic to Mr. Bair to see if he
20 just wanted to add more to that point.

21 MR. BAIR: Oh, Your Honor, actually the point I did
22 want to raise is in response to Mr. Moore, I would be
23 interested in hearing from the insurance companies if they do
24 interpret section 5.14 the same way the debtor does. If it's
25 true that they have no objection to a survivor recovering their

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1 state court abuse judgment and any additional extra contractual
2 judgment that they may obtain against the insurance companies,
3 that may change things. But I do think it's material to
4 understand if they view section 5.14 the same as the debtor or
5 if they view it differently.

6 THE COURT: Okay. Mr. Plevin, I think that is an
7 invitation to you.

8 MR. PLEVIN: Yes. So Your Honor, with respect to
9 5.1.4, or 5.14, we're prepared to talk about that with the
10 debtor and the committee. Not, I think, on the record, but --

11 THE COURT: Okay.

12 MR. PLEVIN: -- to talk about that because we've read
13 the Hand case, and I don't disagree with Mr. Bair that that
14 case is different in that it does appear to give claimants
15 direct rights. And that's why it's also misleading to
16 otherwise, putting that case to the side talk about survivors'
17 rights because survivors have no rights under California law
18 with respect to the other bad faith issues that the committee
19 is raising. Those are rights that belong to the debtor.

20 And this is part of the problem where Mr. Bair was
21 reading from a brief that we filed. And if we're going to try
22 to disclose a lot of the nuances and complexities of this, we
23 have to insert briefs into the disclosure statement explaining
24 what California case law says, explaining what the effect of
25 the discharge under Chapter 11 is, and so on. And it becomes a

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1 legal brief. These are issues that are confirmation issues as
2 to whether or not there are rights. Whether there's a
3 violation of those rights by virtue of the plan.

4 If anything, I think the much more general kind of
5 statement that Ms. Uetz was suggesting is the appropriate way
6 to go because otherwise the complexities are just going to
7 confuse people because unless they're lawyers, and bankruptcy
8 lawyers and coverage lawyers at that, it's going to -- it's
9 going to go right over their heads. And so I think we should
10 avoid putting legal arguments here on the issue of 5.14. We're
11 prepared to talk with the debtor and the committee about that
12 issue.

13 THE COURT: All right. Let's reserve 5.14.

14 And let me turn to anybody else, and I'm really, I
15 guess, leaning toward Mr. Weisenberg here. To what extent, put
16 putting aside the issue that you can envision this disagreement
17 about what rights exist pre and post-confirmation and you could
18 argue about that at confirmation as a legal -- as a disclosure
19 statement question, comment on whether a disclosure statement
20 that says you're going to get all these wonderful things, but
21 is it -- but as one possible effect of confirmation, a lot of
22 them may be gone.

23 I mean, to what extent is that a -- what are we asking
24 people to vote on, if that's the -- if that's the disclosure?
25 Do you want to give me any thoughts on that?

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1 MR. WEISENBERG: I think Your Honor is hitting the
2 nail on the head, which is you can't ask someone to vote on
3 something that's amorphous. Okay. I appreciate the
4 distinction you're drawing between a trustee who says, I'm
5 going to assign this litigation for whatever it's worth,
6 versus --

7 THE COURT: Yeah.

8 MR. WEISENBERG: -- what may be a fundamental
9 disagreement between the parties on what they're actually
10 assigning. And we think that goes far beyond a disclosure
11 issue that goes to the bedrock cornerstone of this plan. I
12 mean, don't forget, Your Honor, this is not a throw in. Right.
13 This is a cornerstone of the consideration that the debtor is
14 supposedly assigning to the trust. Right. I mean, in numerous
15 pages, the disclosure statement talks about the value of the
16 insurance and why that's meaningful. And yet, on day one of if
17 this plan were confirmed, the entirety of that value would be
18 eviscerated. That goes far beyond disclosure.

19 MR. PLEVIN: Your Honor --

20 THE COURT: Well, I mean, would it really be totally
21 eviscerated, or there's something that if there's some bad
22 conduct in the future, you wouldn't be able to realize on that?
23 I mean, there is a distinction, right?

24 MR. WEISENBERG: There's a distinction. But I also
25 think, Your Honor, it depends on how much value you put on what

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1 may be extra contractual damages and whatnot. And that could
2 be meaningful. And that's maybe a drastic understatement.

3 THE COURT: All right. Why don't I hear from Ms. --

4 MR. SCHIAVONI: Your Honor, if I may be heard? Sorry.

5 THE COURT: Well, before I hear from anybody else,
6 I've literally got to stop this in about five minutes. So I
7 don't know if we're going to wrap this up. You guys want to
8 come back this afternoon? And I mean, would it be helpful to
9 have people talk over the next hour or hour and a half and
10 reconvene, or we're going to reconvene some other day? What's
11 your pleasure?

12 MS. UETZ: Your Honor, from my perspective, I doubt
13 that convening on this issue will be useful because we
14 believe --

15 THE COURT: Today.

16 MS. UETZ: -- that the committee wants to block
17 approval of this disclosure statement. And this is just one
18 that we're going to have to present to Your Honor and have Your
19 Honor make a ruling. I'm sorry to say that about this issue,
20 but I believe that we're not going to make progress on this one
21 issue without some further discussion and direction from Your
22 Honor.

23 THE COURT: All right. Ms. Ridley, anything you want
24 to tell me?

25 MS. RIDLEY: I agree with Ms. Uetz. I just want to

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1 make the statement. Nothing in the assignment is violative of
2 California insurance law. What's described in the disclosure
3 is not violative of insurance law. In fact, insurance law says
4 an insured can assign their rights. What we're arguing about
5 is what might be the effect of a discharge regarding acts that
6 haven't happened that might happen in the future. And so I
7 think we're melding certain things. But for the disclosure and
8 the assignment, what's described doesn't violate California law
9 at all.

10 MR. SCHIAVONI: Your Honor, if I could just --

11 THE COURT: Um-hum.

12 MR. SCHIAVONI: Tanc Schiavoni.

13 THE COURT: Yep.

14 MR. SCHIAVONI: I am repeatedly now struck by how good
15 my adversaries here are as lawyers because I've seen them argue
16 the same point exactly the opposite in two different cases.

17 THE COURT: Well, they can't be wrong both ways.

18 Right. They've got to -- one of them's got to be right.

19 MR. SCHIAVONI: In the Camden plan that they advocated
20 and --

21 THE COURT: Yeah.

22 MR. SCHIAVONI: -- sought confirmation for that's the
23 subject of a stay by the Third Circuit, it's --

24 THE COURT: Yeah.

25 MR. SCHIAVONI: -- the language says they assign

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1 whatever they have as a matter of -- like, whatever the law is,
2 it is, and that's what they assign.

3 THE COURT: Okay.

4 MR. SCHIAVONI: That's what they ask for. We had
5 extensive argument. And that's what they got. That's what the
6 Boy Scout plan -- that's how it's phrased. That's how the
7 Rockville Centre plan is phrased and the disclosure statement
8 is presented. The same thing with Syracuse, which has not been
9 confirmed. There is not some sort of extensive addition about
10 what everybody thinks might happen and what might be the law
11 and what might all be all the defenses that could happen here.

12 And the hyperbole here that like, somehow they're
13 losing all their rights, there is no bad faith claim right now.
14 The notion that they're losing all their rights, at most,
15 what's at issue is a speculative bad faith claim that they
16 don't have right now that's in excess of limits. The plan is
17 conveying an enormous value here in conveying the coverage.
18 It's --

19 THE COURT: Okay. Thank you. I hear you. I'm
20 hearing you.

21 Okay. Mr. Prol.

22 MR. PROL: Judge, I didn't want to weigh in on this
23 issue, but I did, before we conclude today, wanted to see if we
24 could have a little further conversation with regard to the
25 lift stay motion. And what I wanted to ask Your Honor to

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1 consider is, given that Your Honor's concerns about that motion
2 surround what the coordinating judge might do and how this new
3 court and judge might handle it, that during this interim
4 period, while Your Honor denied it without prejudice, subject
5 to remaking it, to request that Your Honor grant -- I don't
6 know if it's from the stay or authority, at least, for the
7 coordinating attorneys to confer with the state court judge to
8 float this idea in terms of what the judge might do if state
9 relief were granted so that if as in when it becomes
10 appropriate to renew this application, we might have some
11 answers to those questions.

12 THE COURT: Let me think about that. Thank you.

13 MR. PROL: Thank you, Your Honor.

14 THE COURT: Okay. Mr. Bair, real fast.

15 MR. BAIR: Real quick, Your Honor. Just responding to
16 Mr. Schiavoni, our firm's in a lot of cases. We're not in all
17 of them, so I can't speak to Camden and Boy Scouts. But I can
18 say that in Rochester and Syracuse, the litigation option is
19 structured differently. So it's apples and oranges. Our issue
20 here is the discharge. The timing of it we think is
21 inappropriate. It should come later at the conclusion of each
22 litigation claim. So we do think this plan is structured
23 differently, which is why we're so concerned about this.

24 THE COURT: Well, that's the other question I've had,
25 which is this is the only way to skin this cat. It's the way

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1 that some very sophisticated parties decided they wanted to do
2 it. So I'm not going to suggest that we go back to the drawing
3 board. But I've had that in the back of my head the whole
4 time. I very much appreciate that comment, Mr. Bair. Thank
5 you.

6 MR. BAIR: Thank you.

7 THE COURT: Okay. Ms. Uetz, you want to wrap it up
8 here?

9 MS. UETZ: I know Your Honor has got a hard stop. We
10 oppose Mr. Prol's suggestion. We think that your ruling is
11 without prejudice. If they want to bring the motion based on
12 timing at the appropriate time, we'll address it at that time.
13 But we don't think allowing what was suggested by Mr. Prol is
14 helpful to the process. And Your Honor has already ruled on
15 that motion.

16 THE COURT: Yeah. But in denying it without
17 prejudice, I am not at all offended by Mr. Prol's suggestion.
18 I want to think about that a little bit. That might be a good
19 idea.

20 MS. UETZ: And I would --

21 THE COURT: Well, in part because I'm very sensitive
22 to appearing to tell the state court what to do about this. It
23 would be a very different question to go to the state court and
24 say if there were relief from stay, what would you do. That's
25 apples and oranges to me. Okay.

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1 MS. UETZ: And Your Honor, if you are going to --

2 THE COURT: So I'm thinking about -- I'm thinking
3 about it in that context. Go ahead.

4 MS. UETZ: If you are going to consider it, when we
5 have time, I would just request time to address the Court with
6 respect to it.

7 THE COURT: Okay. Appreciate it. Going forward, when
8 do you guys want to reconvene? I mean, I realize I've got a
9 question about this, the disclosure statement aspects of the
10 plan and the effect of the discharge now. I may, for example,
11 want to, in a day or two, suggest to you that each of you give
12 me the language that you think might be sufficient to address
13 this issue as a disclosure statement issue with respect to the
14 confirmation. If I do that, I will do it thoroughly respecting
15 Mr. Weisenberg's, Mr. Bair's, and Mr. Prol's argument that this
16 is a disclosure statement issue. I mean, the very choice is a
17 disclosure statement issue that cannot be overcome.

18 But I may want to entertain a request to have you guys
19 tell me what you think the language would be, were we to try to
20 address this as a this-is-the-risk issue in a disclosure
21 statement. All right.

22 So with that, I'm sorry to interrupt you. When should
23 we -- when should we be talking again?

24 MS. UETZ: And Your Honor, I know you mentioned that
25 you have the BAP, and I'm not clear on when that is. So I may

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1 ask the --

2 THE COURT: It's basically Thursday and Friday.

3 MS. UETZ: Yeah. So I think I would ask the Court
4 when the Court -- we're going to convene with the committee,
5 Your Honor. I'm not confident that we'll resolve many issues.
6 And so how soon would the Court, can the Court hear back from
7 us? Do you want to see the further amendment, or do you want
8 to reconvene just to kind of see where we are, like we did
9 today? Do you know what I mean?

10 THE COURT: I'm more inclined to do a version of
11 today.

12 MS. UETZ: That's what I was thinking would be
13 productive.

14 THE COURT: Because you may suggest to me, we think
15 we're getting there. We don't have the language yet. And even
16 that would be helpful. Okay. So let --

17 MS. UETZ: Yeah. So with that in mind, Your Honor,
18 soonest early next week would be preferred, given your
19 Thursday, Friday BAP schedule.

20 THE COURT: Yeah. Where are we during the first week,
21 Mr. Fan?

22 THE CLERK: Your Honor, we have the 27th -- I mean,
23 the week other than Wednesday is open.

24 THE COURT: Okay. So the 27th and 28th?

25 THE CLERK: Yes, Your Honor.

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1 THE COURT: Is the 27th too soon, gang? What do you
2 think?

3 MS. UETZ: The 27th is not too soon for the debtor.

4 THE COURT: Okay.

5 MS. UETZ: But Tuesday would also be fine, the 28th,
6 if that's open.

7 THE COURT: Let me hear from the committee and Mr.
8 Plevin.

9 Mr. Plevin, I'm sorry, not hearing you again.

10 MR. PLEVIN: Unless I have my calendar mixed up, Your
11 Honor, on the 28th, I believe we have an all-day in-person
12 mediation in the Archdiocese of San Francisco case.

13 THE COURT: Okay.

14 MR. PLEVIN: And so that might be a little bit
15 cumbersome to try to do a hearing as well on the 28th.

16 THE COURT: So is the 27th -- I mean, assuming the
17 27th is sufficient time to make meaningful progress, it works
18 logically?

19 MR. PLEVIN: We can make it happen.

20 THE COURT: How about from Mr. Weisenberg or Mr. Prol
21 or Mr. Bair? What do you guys think?

22 MR. PROL: Well, Your Honor, I'm not sure exactly what
23 Ms. Uetz contemplates, whether she's going to turn another
24 draft of this or whether we're going to just discuss the
25 issue --

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1 THE COURT: Mr. Prol, I'm losing you again on your
2 mic. Sorry.

3 MR. PROL: I'm sorry. I'm just not sure what Ms. Uetz
4 contemplates here with regard to how we're going to proceed.
5 Is she going to turn another draft of this that she wants us to
6 review and then discuss with her, or are we just going to
7 continue a discussion with regard to the issues generally? I
8 had thought she suggested --

9 THE COURT: Well, you can -- I mean --

10 MR. PROL: I thought she suggested earlier that we
11 meet and confer with regard to a schedule. And that might make
12 some more sense in terms of how we hope to get from here to the
13 next substantive hearing because I think there are a lot of
14 issues that we can probably agree on language, based upon the
15 advice Your Honor has given us.

16 THE COURT: Right.

17 MR. PROL: As Ms. Uetz suggested, there are some
18 issues that we may just not be able to get there on that you're
19 ultimately going to have to call.

20 THE COURT: Yeah.

21 MR. PROL: And so --

22 THE COURT: Well, let me put it to you this -- look,
23 it's not just that I love seeing all of you. I do. I find we
24 always make progress when we get this group together.

25 So whether it's going to be progress to say, okay, now

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1 I've got a disclosure statement that can go out on Monday, I
2 don't know that -- I doubt it will be because I think there's
3 some pretty big homework assignments for the debtor. And I
4 mean them, on the liquidation analysis and a couple of other
5 things. And I think they're going to have to think about that.
6 That will not be an easy assignment to fulfill. But even if we
7 just get together for half an hour to an hour on Monday, I
8 think we need to keep propelling things here, and I'm prepared
9 to do that. Okay.

10 So let's say 10 o'clock on Monday. Does that work for
11 folks?

12 MS. UETZ: That's best for the debtor, Your Honor.

13 THE COURT: All right. And if in the meantime
14 something happens and you think, no, we'd be way better off
15 meeting Thursday, just tell me. That's fine. Okay. I'll be
16 very flexible about that. All right.

17 MS. UETZ: Thank you, Your Honor.

18 MR. PROL: That's fine, Your Honor. Thank you.

19 THE COURT: Okay. Thank you very much, all of you.
20 And I look forward to seeing you next Monday.

21 (Whereupon these proceedings were concluded at 11:14 AM)

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| 2 | RULINGS: | PAGE | LINE |
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| 3 | OPF motion is denied without prejudice | 16 | 6 |
| 4 | Motion for relief from stay is denied | 17 | 19 |
| 5 | without prejudice | | |

1 C E R T I F I C A T I O N
23 I, River Wolf, certify that the foregoing transcript is a true
4 and accurate record of the proceedings.
5
67 
89 /s/ RIVER WOLF, CDLT-265
10

11 eScribers

12 7227 N. 16th Street, Suite #207

13 Phoenix, AZ 85020
1415 Date: January 27, 2025
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